

Shire of Gingin

Extractive Industries Local Law (2004)

[Amended by Extractive Industries Amendment Local Law 2015 Government Gazette 10/07/2015]

Local Government Act 1995

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Local Government Act 1995

Shire of Gingin

EXTRACTIVE INDUSTRIES LOCAL LAW 2004

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Gingin resolved on the Twenty-first day of October 2003 to make the following local law.

PART 1 - PRELIMINARY

1.1 Definitions

In this local law, unless the context otherwise requires -

“**Act**” means the *Local Government Act 1995*;

“**carry on an extractive industry**” means quarrying, excavating, crushing and screening for stone, gravel, sand, clay, limestone, loam and other basic raw materials;

“**CEO**” means the Chief Executive Officer of the local government;

“**district**” means the district of the local government;

“**excavation**” includes quarry;

“**land**” unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

“**licence**” means a licence issued under this local law for a specified site;

“**licensee**” means the person named in the licence as the licensee;

“**local government**” means the Shire of Gingin;

“**occupier**” has the meaning given to it in the Act;

“**owner**” has the meaning given to it in the Act; and

“**person**” does not include the local government.

“**secured sum**” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;

“**site**” means the land specified by the local government in a licence.

1.2 Application

- (1) The provisions of this local law -
 - (a) subject to paragraphs (b), (c) and (d) -
 - (i) apply and have force and effect throughout the whole of the district;
and
 - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;
 - (b) do not apply to the extraction of minerals under the Mining Act 1978;
 - (c) do not apply to the carrying on of an extractive industry on Crown land;
 - (d) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law; and
 - (e) do not apply to the carrying out of an extractive industry on a lot by the owner or occupier of that lot where the material extracted is not sold and is used solely on that lot or on an adjacent lot owned or occupied by the person carrying out the extractive industry.
- (2) Notwithstanding any other provision, the local government may waive any requirement or provision of this local law (including a requirement to hold a valid licence), where the local government is satisfied on receiving a written application for an exemption under this clause that the extractive industry is to be carried out solely for the benefit of a local community or sporting organisation (whether incorporated or not), provided that where the local government is so satisfied –
 - (a) The extractive industry may only be carried out if the local government has authorised it in writing;
 - (b) The local government may impose conditions on the authorisation pursuant to which the extractive industry shall operate (including in a case where the CEO otherwise waives the requirement to hold a valid and current licence);
 - (c) The person carrying out the extractive industry shall comply with any conditions imposed by the local government on the authorisation;
 - (d) Failure to comply with any condition imposed by the local government is deemed to be an offence pursuant to clause 2.1(b);
 - (e) The local government may from time to time vary or delete any conditions previously imposed, and may impose a new condition or conditions; and

- (f) The local government may at any time determine that the extractive industry authorised pursuant to this clause shall cease, provided that the local government shall give written notice to the person carrying out the extractive industry which allows a minimum 28 days for the cessation of operations.

1.3 Repeal

The local law of the Shire of Gingin relating to Extractive Industries published in the Government Gazette on 27 November 1987, is repealed.

PART 2 – LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

2.1 Extractive Industries Prohibited Without Licence

A person must not carry on an extractive industry -

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

2.2 Application for Licence

- (1) A person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with –
 - (a) The application fee as prescribed by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act.
 - (b) A site plan, including a plan of the area of extraction at a scale of not less than 1:1000, and including the following:
 - (i) area depth and volume of extraction (existing and proposed final contours at 1 metre intervals);
 - (ii) distances from lot boundaries and all dwellings and other sensitive uses within a 1km radius of the extraction site;
 - (iii) road frontages and property access;
 - (iv) details of existing and surrounding land uses;
 - (v) existing vegetation, wetlands and watercourses, and distance to the proposed area of extraction;
 - (vi) area, height and volume of material and top soil stockpiles; and

- (vii) the location of any buildings associated with the proposal.
- (c) A report addressing and/or including the following –
 - (i) type of material to be excavated;
 - (ii) details of methods of extraction, including any crushing or blasting, or whether extraction only;
 - (iii) hours of operation (including crushing, blasting and excavation);
 - (iv) storage of chemicals;
 - (v) estimated completion date;
 - (vi) type of equipment to be used, including size of trucks and machinery;
 - (vii) maintenance and any refuelling of trucks on site;
 - (viii) number of truck movements per day/week;
 - (ix) details of staging;
 - (x) proposed haulage routes and destinations;
 - (xi) proposed road warning signage;
 - (xii) noise, dust and vibration abatement measures;
 - (xiii) visual impact assessment, with particular reference to major roads, tourist routes and interest points, and surrounding properties and structures;
 - (xiv) drainage implications including surface and ground water impacts;
 - (xv) proposed end use of site;
 - (xvi) a detailed rehabilitation plan including types of materials, staging, source of materials, re-contouring, replacement of topsoil, screen planting and revegetation (vegetation species and densities);
 - (xvii) assessment of the risk of spreading *Phytophthora* dieback and management techniques appropriate to that level of risk;
 - (xviii) management techniques to address potential conflict with surrounding landuses and protection of environmental attributes; and
 - (ixx) any other assessment the local government may require, including Aboriginal and European heritage considerations if within a known area of significance.

PART 3 - DETERMINATION OF APPLICATION

3.1 Determination of Application

- (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
- (2) The local government may, in respect of an application for a licence -
 - (a) refuse the application; or
 - (b) approve the application -
 - (i) over the whole or part of the land in respect of which the application is made; and
 - (ii) on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for a licence, it must -
 - (a) determine the licence period, not exceeding 5 years from the date of issue or such other period so as to be in accordance with the relevant planning approval; and
 - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of -
 - (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 31 December next, determined by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act;
 - (b) payment of the secured sum if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) A copy of the public liability insurance policy required under Clause 7.1 (1),shall issue the licence to the applicant.
- (5) Without limiting subclause (2), the local government may impose conditions in respect of the following matters -
 - (a) the orientation of the excavation to reduce visibility from other land;

- (b) the appropriate siting of access thoroughfares, buildings and plant;
- (c) the stockpiling of material;
- (d) the approval of the number and size of trucks entering and leaving the site each day and the route or routes to be utilised by the trucks;
- (e) the hours during which any excavation work may be carried out;
- (f) the hours during which any processing plant associated with, or located on, the site may be operated;
- (g) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
- (h) the depths below which a person must not excavate;
- (i) distances from adjoining land or thoroughfares within which a person must not excavate;
- (j) the safety of persons employed at or visiting the excavation site;
- (k) the control of dust and wind-blown material;
- (l) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
- (m) the prevention of the spread of dieback or other disease;
- (n) the drainage of the excavation site and the disposal of water;
- (o) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
- (p) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
- (q) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
- (r) requiring the licensee to meet all conditions imposed under the approval issued by the local government in relation to the extractive industry;

- (s) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law;
- (t) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy, or extraordinary traffic by or on behalf of the licensee under the license; and
- (u) any other matter for properly regulating the carrying on of an extractive industry.

3.2 Payment of Annual Licence Fee

On or before 30 June in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time and in accordance with sections 6.19 to 6.19 of the Act.

PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1 Transfer of Licence

- (1) An application for the transfer of a licence must -
 - (a) be made in writing;
 - (b) be signed by the licensee and the proposed transferee of the licence;
 - (c) be accompanied by the current licence;
 - (d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;
 - (e) include any information that the local government may reasonably require; and
 - (f) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may -
 - (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.

- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.
- (4) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

4.2 Cancellation of Licence

- (1) The local government may cancel a licence where the licensee has -
 - (a) been convicted of an offence against -
 - (i) this local law; or
 - (ii) any other law relating to carrying on an extractive industry; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (c) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this local law;
 - (d) failed to pay the annual licence fee under clause 3.2; or
 - (e) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 7.1(2).
- (2) Where the local government cancels a licence under this clause -
 - (a) the local government shall advise the licensee in writing of the cancellation;
 - (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and
 - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

4.3 Renewal of Licence

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and must submit with the application for renewal -
 - (a) the fee determined by the local government from time to time;

- (b) a copy of the current licence;
 - (c) a plan showing the contours of the excavation carried out to the date of that application;
 - (d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1) (b) and (c); and
 - (e) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1) (d) or (e).
- (3) If –
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
 - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application,
- then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.
- (4) Upon receipt of an application for the renewal of a licence, the local government may -
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.

PART 5 - SECURED SUM AND APPLICATION THEREOF

5.1 Security for Restoration and Reinstatement

- (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that -
- (a) as a condition of a licence; or
 - (b) before the issue of a licence,

the licensee must give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.

- (2) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

5.2 Use by the Local Government of Secured Sum

- (1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either -
- (a) within the time specified in those conditions; or
 - (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions,

Then, subject to the local government giving the licensee 14 days' notice of its intention to do so,

- (c) the local government may carry out the required restoration and reinstatement work or so much of that work as remains undone; and
 - (d) the licensee must pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.
- (2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.
- (3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

PART 6 - LIMITATIONS AND PROHIBITIONS

6.1 Limits on Excavation Near Boundary

Subject to any licence conditions imposed by the local government, a person shall not, without the written approval of the local government, excavate within -

- (a) 20 metres of the boundary of any land on which the excavation site is located;
- (b) 20 metres of any land affected by a registered grant of easement;
- (c) 40 metres of any thoroughfare; or
- (d) 40 metres of any watercourse.

6.2 Prohibitions

A licensee must not -

- (a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any road reserve on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (c) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Mines and Petroleum;
- (d) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

6.3 Blasting

- (1) A person must not carry out or permit to be carried out any blasting in the course of excavating unless -
 - (a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;
 - (b) subject to sub-clause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, or as determined by the local government, on Mondays to Fridays inclusive;
 - (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the Mines Safety and Inspection Act 1994, the Environment Protection Act 1986, and all relevant local laws of the local government; and
 - (d) in compliance with any other conditions imposed by the local government concerning-
 - (i) the time and duration of blasting;
 - (ii) the purposes for which the blasting may be used;
 - (iii) the methods of detonation and blasting;

- (iv) the types of explosives to be used; and
 - (v) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.
- (2) A person must not carry out or permit to be carried out any blasting on a Saturday, Sunday or Public Holiday except with the prior approval of the local government.

6.4 Obligations of the Licensee

A licensee must –

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign –
 - (i) is not more than 200 metres apart;
 - (ii) is not less than 1.8 metres high and not less than one metre wide; and
 - (iii) bears the words “DANGER EXCAVATIONS KEEP OUT”;
- (c) except where the local government approves otherwise, drain and keep drained to the local government’s satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

PART 7 - MISCELLANEOUS PROVISIONS

7.1 Public Liability

- (1) A licensee must have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.

- (2) The licensee shall provide to the local government a copy of the policy taken out under sub-clause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of renewal within 14 days of each renewal date.

7.2 Mines Safety and Inspection Act 1994 and Environmental Protection Act 1986

- (1) In any case where the Mines Safety and Inspection Act 1994 or the Environmental Protection Act 1986 applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site must -
- (a) comply with all applicable provisions of that Act or those Acts; and
 - (b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.
- (2) In this clause, the Mines Safety and Inspection Act 1994 and the Environmental Protection Act 1986 include all subsidiary legislation made under those Acts.

7.3 Notice of Cessation of Operations

- (1) Where a licensee intends to cease carrying on an extractive industry -
- (a) temporarily for a period in excess of 12 months; or
 - (b) permanently,
- the licensee must, as well as complying with clause 7.4, give the local government written notice of the cessation not later than one week after those operations have ceased.
- (2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date such cessation is so notified.
- (3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

7.4 Works to be Carried Out on Cessation of Operations

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee must, as well as complying with the provisions of clause 7.3 -

- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently agree in writing with the licensee;

- (b) ensure that any face permitted to remain upon the excavation site is left safe with all loose materials removed and where the excavation site is -
 - (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); and
 - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;
- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning programme approved by the local government;
- (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse or drain that is not wholly situated within the land owned or occupied by the licensee;
- (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
- (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

PART 8 - OBJECTIONS & REVIEW

8.1 Objections and Review

When the local government makes a decision as to whether it will -

- (a) grant a person a licence under this local law; or
- (b) renew, vary, or cancel a licence that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

PART 9 – ENFORCEMENT

9.1 Offences

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which, under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence had continued.

9.2 Modified Penalties

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

9.3 Forms

For the purposes of this local law –

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1 – Prescribed offences and modified penalties
[clause 9.2(1)]

Item	Clause	Description	Modified Penalty \$
1.	2.1(a)	Excavate without a valid and current licence	500
2.	2.1(b)	Carry on extractive industry without licence or in breach of terms and conditions	500
3.	6.1	Excavate near boundary	250
4.	6.2(a)	Removal of trees or shrubs within 40 metres of the boundary without approval	350
5.	6.2(c)	Store without required approval explosives or explosive devices	350
6.	6.2(d)	Fill or excavate, contrary to the terms and conditions of the licence	350
7.	6.3(1)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	300
8.	6.3(1)(d)	Failure to comply with conditions imposed by the local government in relation to blasting activities	350
9.	6.3(2)	Carry out or permit to be carried out any blasting on Saturday, Sunday, or public holiday without approval	250
10.	6.4(a)	Failure to securely fence and/or keep gateways locked where required	350
11.	6.4(b)	Failure to erect and maintain warning signs where required	350
12.	6.4(c)	Failure to drain and keep drained any excavation to which the licence applies	350
13.	6.4(f)	Failure to comply with the conditions of licence imposed by the local government	500
14.		All other offences not specified	200

Dated this Thirty-first day of March 2004.

The Common Seal of the Shire of)
Gingin was affixed by authority of)
a resolution of the Council in the)
presence of:-)

G E MORTON
Shire President

S D FRASER
Chief Executive Officer